

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of The Telecommunications Act)	
of 1996)	

REPLY COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company (“Tribune”) hereby comments in reply to parties seeking to eliminate the UHF discount. Commenting parties have generally split into two camps on whether language in the Appropriations Act¹ and the principles of statutory construction should cause the Commission to defer any action on the UHF discount, or, alternatively, allow the Commission to proceed to modify or repeal the rule in response to pending petitions for reconsideration of the *2002 Biennial Review Order*.² As pointed out in Tribune’s initial comments, Congress directed the Commission to adopt a television ownership limit based on 39 percent of “national audience reach,” a term understood by Congress to include the UHF discount, and further, explicitly prohibited the Commission from reviewing the national cap or

¹ *Consolidated Appropriations Act*, Pub. L. No. 108-199, 118 Stat. 3 (2004) (“Appropriations Act”).

² *In the Matter of 2002 Biennial Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, Definition of Radio Markets for Areas Not Located in An Arbitron Survey Area*, 18 FCC Rcd 13620 (2003)(“2002 Biennial Review Order”), *appeal pending sub nom., Prometheus Radio Project v. FCC*, No. 03-3388 (3rd Cir. 2003).

“any rules relating to the 39 percent national audience reach limitation” in any review conducted pursuant to Section 202(h) of the Telecommunications Act of 1996.³ Tribune underscores its view that the Commission should dismiss the petitions for reconsideration filed in response to the *2002 Biennial Review Order*, a proceeding undertaken pursuant to Section 202(h) of the Telecommunications Act. This action is clearly called for by the plain language of the Appropriations Act.

Should the Commission proceed to review the merits of the UHF discount, Tribune urges its continuation so long as the disparity between VHF and UHF service continues to exist. Attached to its initial comments, Tribune submitted fresh evidence demonstrating that UHF stations do not reach their audiences as effectively as VHF stations. In the November 2003 ratings period, for example, 479 VHF stations averaged a 14.8 household share (unweighted) while 439 UHF stations averaged a 6.2 share, or 58 percent less than the VHF average share, sign-on to sign-off, comparing affiliates of the same networks across all markets.⁴ Those parties urging repeal of the UHF discount have not made the case that the disparity has been eliminated. They offer no evidence that UHF stations are viewed by prospective buyers as equivalent to VHF stations – because, in fact, VHF stations continue to provide greater signal coverage and are less costly to operate. Because of this continuing disparity, the Commission would be premature in repealing or modifying the UHF discount in response to pending petitions for reconsideration of the *2002 Biennial Review Order*.

Those commenters opposed to the UHF discount discuss the *2002 Biennial Review Order* as if the Commission’s main ruling with respect to the UHF discount was to sunset the discount with respect to the four major network owned and operated stations as the digital transition is

³ Appropriations Act, § 629.

completed.⁵ The Commission's more detailed discussion and analysis, however, focused on the substantial record supporting the UHF discount. The Commission determined that, given all of the facts as of June 2003, the UHF discount is still necessary in the public interest to adjust for the UHF-VHF disparity.⁶ This is the principal decision by the Commission and it is well reasoned, well supported by the evidence, and should be reiterated, if the Commission reaches the merits in disposing of the petitions for reconsideration.

Although the Commission expressed its intention for the UHF discount to sunset on a market by market basis when the digital transition is complete, initially for the owned and operated stations of ABC, CBS, NBC, and Fox, Tribune believes that this intention was not sufficiently detailed to be self-effectuating.⁷ The Commission's statement that "we will sunset the application of the UHF discount for the stations owned by the top four broadcast networks (*i.e.*, CBS, NBC, ABC, and Fox) as the digital transition is completed on a market by market basis" does not provide those licensees with enough specific information to know exactly when the UHF discount is not to be used to measure national ownership.⁸ "Completion of the digital transition" is an imprecise term that is likely to be clarified by the Commission. A further proceeding would be necessary in order to turn the Commission's intention to sunset the UHF discount into an enforceable order – even as it applies to the owned and operated stations of the top four networks.

⁴ Tribune Comments at 11-12 and Attachment A.

⁵ *See, e.g.*, Comments of the Network Affiliated Stations Alliance at 2-3; Comments of the Office of Communications of the United Church of Christ, Inc. et al. at 4, 13-14.

⁶ 2002 Biennial Review Order, ¶ 586.

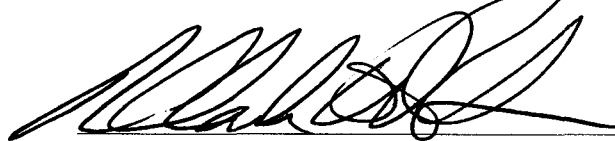
⁷ *Id.* at ¶ 591.

⁸ *Id.*

Further, Tribune believes that it is up to the Commission (or Congress, should it choose to act) to determine if and when it should review the UHF discount, once it resolves the petitions for reconsideration of the *2002 Biennial Review Order*. The Commission is in the best position to keep a close eye on the progress of the digital transition.⁹ It is able to monitor station sales activity, DTV facilities maximization progress, UHF-VHF ratings and share performance, and other indicators of the UHF-VHF disparity. The Commission is best able to determine the intention of Congress with regard to the interplay of the UHF discount with national ownership limitations. If, in the future, the Commission determines that Congress has not prohibited it from reviewing the UHF discount outside of a proceeding undertaken pursuant to § 202(h) of the Telecommunications Act, and it believes that circumstances in the television industry warrant such a review, that would be the appropriate time for the Commission to flesh out its intention to sunset the UHF discount – not at the present time.

Respectfully submitted,

TRIBUNE BROADCASTING COMPANY



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⁹ See *Second Periodic Review of the Digital Television Transition*, 18 FCC Rcd 1279 (2003).